

COPY

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Attorneys for Plaintiff
 TiVo Inc.

2012 JUN -6 PM 4: 26
 CLERK U.S. DISTRICT COURT
 CENTRAL DIST. OF CALIF.
 LOS ANGELES

FILED

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

TIVO INC.,

Plaintiff,

vs.

VERIZON COMMUNICATIONS,
 INC.; VERIZON SERVICES CORP.;
 VERIZON CORPORATE
 RESOURCES GROUP, LLC;
 VERIZON CORPORATE SERVICES
 GROUP INC.; and VERIZON DATA
 SERVICES LLC,

Defendants.

Case No. SACV12-898-JST (AKK)

DISCOVERY MATTER

**PETITION TO ENFORCE
 SUBPOENA TO THIRD PARTY
 BROADCOM IN CASE PENDING
 IN FOREIGN JURISDICTION
 (EASTERN DISTRICT OF TEXAS)**

PETITION TO COMPEL COMPLIANCE

Plaintiff, by and through its attorneys of record, Mckool Smith Hennigan P.C., hereby brings this Petition to Compel Compliance with the subpoena issued by the United States District Court for the Central District of California in the case pending in the United States District Court for the Eastern District of Texas, entitled *TiVo Inc. v. Verizon Communications Inc., et al.*, Case 2:09-cv-257-DF-CMC, to compel third-party Broadcom to produce documents and appear at a deposition pursuant to Rules 30(b)(6), 34, and 45 of the Federal Rules of Civil Procedure and Civil Local Rule 37-2.

1 **PARTIES**

2 1. Plaintiff TiVo INC. ("TiVo") is a corporation organized under the laws
3 of Delaware, having its principal place of business at 2160 Gold Street, Alviso,
4 California 95002-2160.

5 2. Upon information and belief, Defendant Verizon Communications is a
6 corporation formed under Delaware law and has its principal place of business at
7 140 West Street, New York, New York 10007.

8 3. Upon information and belief, Defendant Verizon Services Corp. is a
9 corporation formed under Delaware law and has its principal place of business at
10 1320 North Court House Road, Arlington, Virginia 22201.

11 4. Upon information and belief, Defendant Verizon Corporate Resources
12 Group LLC is a limited liability company formed under Delaware law and has its
13 principal place of business at One Verizon Way, Basking Ridge, New Jersey 07920.

14 5. Upon information and belief, Defendant Verizon Corporate Services
15 Group is a New York corporation with a place of business at One Verizon Way,
16 Basking Ridge, New Jersey 07920.

17 6. Upon information and belief, Defendant Verizon Data Services LLC is
18 a Delaware limited liability company with a place of business at 7701 East Telecom
19 Parkway, B3E, Temple Terrace, Florida 33637.

20 7. Upon information and belief, third party Broadcom Corporation
21 ("Broadcom") is a California corporation with a place of business at 5300 California
22 Avenue, Irvine, California 92617.

23 **JURISDICTION**

24 8. The case to which this discovery matter pertains, *TiVo Inc. v. Verizon*
25 *Comms. et al.*, Case 2:09-cv-257-DF-CMC (the "Main Case"), involves patent
26 infringement claims based upon and arising under the Patent Laws of the United
27 States, 35 U.S.C. § 100 *et seq.*, and is currently pending in the United States District
28

1 Court for the Eastern District of Texas. Therefore, this Court has jurisdiction over
2 the subject matter of this action by virtue of 28 U.S.C. § 1331.

3 **VENUE**

4 9. Venue is proper in this district because third-party Broadcom resides
5 within this judicial district and the events or omission which are the basis of the
6 dispute underlying this Petition occurred within this judicial district under 28 U.S.C.
7 § 1391(a)(1), (2).

8 **FACTUAL ALLEGATIONS**

9 10. On or about August 26, 2010, the United States District Court for the
10 Central District of California issued a Subpoena in a Civil Case (the "August 2010
11 Subpoena") to third-party Broadcom, pursuant to Rules 34 and 45 of the Federal
12 Rules of Civil Procedure for use by Plaintiff TiVo in the Main Case.

13 11. Plaintiff TiVo served the August 2010 Subpoena on third-party
14 Broadcom on or about August 27, 2010.

15 12. On or about August 11, 2011, the United States District Court for the
16 Central District of California issued a Subpoena in a Civil Case (the "August 2011
17 Subpoena") to third-party Broadcom, pursuant to Rules 30(b)(6) and 45 of the
18 Federal Rules of Civil Procedure for use by Plaintiff TiVo in the Main Case.

19 13. Plaintiff TiVo served the August 2011 Subpoena on third-party
20 Broadcom on or about August 11, 2012.

21 14. Plaintiff TiVo and third-party Broadcom have met and conferred
22 extensively regarding compliance with the August 2010 Subpoena and August 2011
23 Subpoena. Although third-party Broadcom agreed to and did produce documents to
24 Plaintiff TiVo, Plaintiff TiVo believes that production is incomplete. Despite
25 TiVo's repeated requests, third-party Broadcom has declined to confirm that it will
26 provide a witness to testify in response to the August 2011 Subpoena.

1 15. On June 1, 2012, Plaintiff TiVo sent third-party Broadcom a meet and
2 confer letter pursuant to Central District Local Rule 37-1, requesting that third-party
3 Broadcom produce documents and appear for a deposition.

4 16. On June 4, 2012, counsel timely met and conferred to try to resolve the
5 dispute.

6 17. Despite Plaintiff TiVo's cooperative efforts to narrow its discovery
7 requests, third-party Broadcom refuses to agree to comply with the August 2010
8 Subpoena and August 2011 Subpoena by producing documents and appearing for a
9 deposition. Instead, third-party Broadcom has insisted that Plaintiff TiVo file a
10 motion to compel.

11 18. Plaintiff TiVo is left with no alternative but to seek this Court's
12 assistance in compelling third-party Broadcom's immediate compliance with the
13 August 2010 Subpoena and August 2011 Subpoena.

14 **PRAYER FOR RELIEF**

15 Based on the above, Plaintiff TiVo prays for judgment as follows:

16 (1) To compel third-party Broadcom to produce documents and attend
17 deposition in compliance with the Subpoena pursuant to Rules 30(b)(6), 34, and 45
18 of the Federal Rules of Civil Procedure and Civil Local Rule 37-2.

19 (2) For Plaintiff TiVo's attorney fees, costs, and expenses incurred to compel
20 compliance of the Subpoena against third-party Broadcom; and

21 (3) For other such relief as the Court deems just and proper.

22 Dated: June 6, 2012

Respectfully submitted,

23 /s/ Roderick G. Dorman

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 Attorneys for Plaintiff TiVo Inc.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Josephine Tucker and the assigned discovery Magistrate Judge is Arthur Nakazato.

The case number on all documents filed with the Court should read as follows:

SACV12- 898 JST (ANx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

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NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☐ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☒ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☐ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/> TIVO INC., PETITIONER		DEFENDANTS BROADCOM CORPORATION, RESPONDENTS	
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) FOR PETITIONER: Roderick G. Dorman, Mckool Smith Hennigan P.C., 865 South Figueroa St., Suite 2900, Los Angeles, CA 90017, (213) 694-1200, RDorman@mckoolsmithhennigan.com		Attorneys (If Known) FOR RESPONDENTS: Amanda Tassar, Perkins Coie LLP, 1900 Sixteenth Street, Suite 1400, Denver, CO 80202-5255, 303.291.2357, atassar@perkinscoie.com	

II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%;"> <tr> <td style="width:33%;">Citizen of This State</td> <td style="width:10%;">PTF <input type="checkbox"/> 1</td> <td style="width:10%;">DEF <input type="checkbox"/> 1</td> <td style="width:33%;">Incorporated or Principal Place of Business in this State</td> <td style="width:10%;">PTF <input type="checkbox"/> 4</td> <td style="width:10%;">DEF <input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF <input type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
Citizen of This State	PTF <input type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4														
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5														
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6														

IV. ORIGIN (Place an X in one box only.)
☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify): _____
☐ 6 Multi-District Litigation
☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☐ Yes ☒ No (Check "Yes" only if demanded in complaint.)
CLASS ACTION under F.R.C.P. 23: ☐ Yes ☒ No **MONEY DEMANDED IN COMPLAINT:** \$ _____

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
 Petition to enforce subpoenas by motion to compel deposition and documents from third party Broadcom pursuant to Fed. R. Civ. Proc. 30(b)(6), 34, and 45 (no statute)

VII. NATURE OF SUIT (Place an X in one box only.)

<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
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FOR OFFICE USE ONLY: Case Number: SACV12-898

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes

If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

- (a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.
☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Petitioner TiVo: Santa Clara County

- (b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.
☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Respondent Broadcom: Orange County	

- (c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles and Orange Counties	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER): /s/ Roderick G. Dorman Date June 6, 2012

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))